

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RONALD C. FRYER, et al.,

Plaintiff,

v.

BERNIE BROWN et al.,

Defendant.

Case No. C04-5481 FDB

ORDER GRANTING MOTION TO
AMEND COMPLAINT AND
DENYING MOTION TO STAY
PROCEEDINGS

This matter is before the Court on the motion of Plaintiff to amend its original complaint. Plaintiff requests to supplement facts to reflect and clarify the Preliminary Injunction and Temporary Restraining Order issued by this Court. The amended complaint is intended to supplement the facts, not to replace or supercede the original complaint. Having considered the motion to amend, the papers on file herein, and finding no objection, the Court finds for the reasons bet forth below, that Plaintiff's motion to amend is GRANTED. Motion to stay proceeding is DENIED.

I.


1 Plaintiff is entitled to have its lawsuit decided on the basis of its pleadings and proof. *United States*
2 *of America v. Home Indemnity Co.*, 489 F.2d 1004, 1007 (7th Cir. 1973). The spirit and the design
3 of the rules dictate that every suitor shall either prevail or fail on the justness of his cause, not the
4 technical niceties of the pleadings. *Id.* If the proof varies from the pleadings it is entitled to amend
5 the pleadings to conform to the proof. Fed. R. Civ. P. 15(b).

6 ACCORDINGLY,

7 IT IS ORDERED:

- 8 (1) Plaintiff's motion to supplement the original complaint as filed with its motion (dkt.
9 72) is GRANTED;
- 10 (2) Plaintiff's motion to stay scheduling order pending determination of motion to
11 supplement (dkt. #74) is DENIED.

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14 DATED this 24th day of May, 2005

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17 FRANKLIN D. BURGESS
18 UNITED STATES DISTRICT JUDGE
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ORDER - 3